

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JASON LEOPOLD, BUZZFEED, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 19-cv-1278 (RBW)
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE, et al.)	
)	
Defendants.)	
)	
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CABLE NEWS NETWORK,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-cv-1626 (RBW)
)	
FEDERAL BUREAU OF)	
INVESTIGATION,)	
)	
Defendant.)	
)	

SECOND DECLARATION OF VANESSA R. BRINKMANN

I, Vanessa R. Brinkmann, declare the following to be true and correct:

1. I am Senior Counsel in the Office of Information Policy (OIP), United States Department of Justice (Department or DOJ). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act (FOIA) requests subject to litigation processed by the Initial Request Staff (IR Staff) of OIP. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from within six senior leadership offices of the Department, specifically the Offices of the Attorney General (OAG), Deputy Attorney

General (ODAG), Associate Attorney General (OASG), Legal Policy (OLP), Legislative Affairs (OLA), and Public Affairs (PAO). Moreover, the IR Staff is responsible for processing FOIA requests seeking certain records from the Special Counsel's Office (SCO).

2. The IR Staff of OIP is responsible for conducting searches in response to FOIA requests seeking records of the above-referenced offices, for determining whether records located pursuant to its searches are responsive to those FOIA requests, and, if so, whether such records are appropriate for release in accordance with the FOIA. In processing such requests, the IR Staff consults with Department personnel in the senior leadership offices, with Department records management staff and/or with other components within the Department, as well as with others in the Executive Branch.

3. I make the statements herein on the basis of personal knowledge and on information acquired by me in the course of performing my official duties, including my familiarity with OIP's resources and procedures for responding to FOIA requests, my discussions with knowledgeable Department personnel, and my review of and determinations made regarding the request and material at issue in this case.

4. This second declaration will specifically address the questions directed to Defendants in this Court's October 3, 2019 Order, ECF No. 33.¹

OIP's Current Caseload and Staffing Levels

5. As stated above, OIP's Initial Request Staff (IR Staff) is responsible for processing FOIA requests seeking records from within OIP and from within six senior leadership offices (OAG, ODAG, OASG, PAO, OLA, OLP), plus certain records of SCO. The IR Staff's

¹ OIP is only providing information related to case number 19-cv-1278, filed by Plaintiffs Jason Leopold and BuzzFeed, because OIP was not named as a defendant in the Cable News Network (CNN) suit, originally filed as case number 19-cv-1626.

Litigation Team is specifically responsible for handling those requests that are in litigation. The remainder of the IR Staff is responsible for handling all other FOIA requests – i.e., requests for leadership office or SCO records that are not in litigation.

6. As of November 12, 2019, OIP has 1,820 open FOIA requests and 121 ongoing litigations.

7. The non-litigation staff consists of five full-time employees (FTEs) (Chief of the Initial Request Staff, one reviewer, and three Senior Government Information Specialists (GIS)), one temporary detailee (six-month detail with four and a half months left with OIP), and three contractors. The three GIS, three contractors, and one detailee are responsible for processing all FOIA requests received by OIP that are not in litigation, subject to review by the IR Staff reviewer and/or Chief. In sum, the 1,820 non-litigation FOIA requests involving senior leadership office and SCO records under OIP's purview are currently processed by a staff of seven individuals and two reviewers.

8. The IR Staff's Litigation Team consists of seven FTEs (Senior Counsel, two Senior Supervisory Attorneys, and four Attorney-Advisors). Each FOIA litigation is assigned to a team of two: one of the four Attorney-Advisors, paired with one of the two Senior Supervisory Attorneys. Each Attorney-Advisor is responsible for handling all aspects of each litigation request assigned to them, including searching for and processing responsive records, coordinating consultations within the Executive Branch, drafting declarations and other court filings, and working with the litigators assigned to each case, subject to review by the Senior Supervisory Attorney and/or the Senior Counsel. In sum, all 121 FOIA litigations involving senior leadership office or SCO records under OIP's purview are processed by a staff of four attorneys and three reviewing attorneys.

9. Of the 121 matters being handled by the IR Staff Litigation Team, OIP is a named litigant in 102 cases at varying stages in multiple jurisdictions. Of these 102 cases, seventy-eight are filed in the United States District Court for the District of Columbia and twenty-four are filed in other jurisdictions. Of the remaining nineteen matters, nine are litigation consultations and ten are litigation referrals, which OIP receives from other DOJ components or Executive Branch agencies who are named defendants in FOIA litigation. For perspective, about one year ago, as of November 13, 2018, OIP was involved in a total of ninety-three ongoing litigation matters – amounting to a 30% increase in litigation in the past year.

10. Plaintiffs Jason Leopold and BuzzFeed have filed nine FOIA litigation cases involving OIP, eight of which were filed in the United States District Court for the District of Columbia. The eight cases in this district involve a total of twenty-eight individual FOIA requests, most of which consist of multiple, often unrelated parts requiring OIP to conduct several different searches for even just one of the twenty-eight requests. As of November 12, 2019, the IR Staff has at least eighty-five open FOIA requests submitted by Mr. Leopold or BuzzFeed: sixty-three from Mr. Leopold, and another twenty-two from other BuzzFeed reporters.²

11. OIP has been inundated by an ongoing and unprecedented surge of FOIA requests, which began in the middle of Fiscal Year (FY) 2016 and which has not abated. In addition to the sheer volume of incoming FOIA requests, OIP has also experienced an influx of increasingly complicated requests requiring complex, voluminous searches of a variety of

² OIP's FOIA tracking system can only identify FOIA requests submitted by BuzzFeed reporters when "BuzzFeed" is included in the "organization" field associated with a given FOIA request. It is likely that OIP has more than twenty-two requests submitted by other BuzzFeed reporters that don't list BuzzFeed in the tracking system's "organization" field.

electronic records, most notably emails, often implicating dozens of records custodians and vast amounts of electronic data. At the same time, the number of lawsuits filed in connection with requests being processed by OIP has exponentially increased – in fact, tripling in the past three years.³ This combination of increased volume of requests and custodians, request scope and complexity, and exponential increase in litigation has substantially increased the amount of time and resources required for OIP to complete its searches and processing, and has exhausted OIP's resources.

OIP's Efforts to Respond to Its Surging FOIA Obligations

12. To OIP's knowledge, DOJ has not requested additional funding from Congress to hire Federal employees to assist in processing FOIA requests. The Department recognizes that the solution to modernization is a combination of hardware, software, and staffing. Solely adding staff, without increasing capacity, will not fully address the problem. Consequently, the Department has invested significant resources to bolster the Department's technical capacity and capability in an effort to handle the increased volume of FOIA requests, as well as shifted internal resources to address issues with FOIA and e-discovery.

13. In FY 2019, OIP acquired three contractors and one temporary detailee to work on non-litigation FOIA requests, as described supra in paragraph seven, allowing the IR Staff to process more requests than it received over the last six months of FY 2019. Additionally, in FY 2018 and FY 2019 OIP reallocated internal resources, and the IR Staff Litigation Team acquired two Senior Attorneys from another team within OIP to address the exponential increase in litigation. To further address staffing constraints and directly address this exponential increase

³ At the beginning of FY 2017, OIP was involved in forty FOIA litigation matters. As noted elsewhere, OIP is involved in 121 FOIA litigation matters.

in litigation matters, the Litigation Team has advertised and intends to onboard Attorney-Advisor detailees, and is exploring acquiring additional contractors, to assist with the litigation demand.

14. Furthermore, in FY 2019, OIP reorganized its internal search processing queues by expanding the number of search queues used by the Justice Management Division, Office of the Chief Information Officer (JMD/OCIO), the entity which conducts all electronic searches, including emails on behalf of OIP. These search queues are distinguished from each other by the total number of senior leadership office search custodians required to be searched. This process allows JMD/OCIO to more efficiently and effectively run searches for simpler/narrower requests, which may be completed more quickly when they are not in the search queue behind larger, more complex requests involving more search custodians.

15. Finally, OIP is working closely with JMD/OCIO to make improvements to efficiency and search capacity for the FOIA records searches it handles on behalf of OIP. JMD/OCIO has been able to devote additional resources to address the backlog of records searches pending in their queues with the addition of four contractors in FY 2020. Additionally, JMD has an expected increase of four servers between FY 2019 and FY 2020 and increased their software licensing capacity by 250%, contributing to a more effective and efficient search process.

16. Despite all of the challenges described above, OIP continues to respond by employing a variety of system improvements and adaptive methods that have resulted in record numbers of FOIA requests being processed to completion each year. However, OIP recognizes that even with these adaptations and advances, its backlog of requests continues to grow, and it is therefore essential that OIP continue to identify new efficiencies in our FOIA processing

methods to ensure that the management of our FOIA caseload is as dynamic as the breadth, complexity, and volume of the FOIA requests being received by OIP. For this reason, OIP continues to look at ways to increasing staffing levels while also improving the technological processes which are at the heart of processing the FOIA requests received by OIP.

17. Notwithstanding our limited resources and surging FOIA obligations, OIP has consistently succeeded in fulfilling more FOIA requests annually. In FY 2014 and 2015, OIP fulfilled 1,265 and 1,528 FOIA requests, respectively. In FY 2016, OIP fulfilled over 2,000 requests for the first time, fulfilling a total of 2,054 FOIA requests. In FY 2017 OIP fulfilled 2,113 FOIA requests. FY 2018 was OIP's all-time record, fulfilling 2,790 FOIA requests. FY 2019 was the first time since 2014 where OIP did not fulfill more records than the previous year, due to both the month-long government shutdown at the beginning of FY 2019 and a change in OIP's tracking system that took place halfway through FY 2019. Still, OIP was able to fulfill 2,460 FOIA requests in FY 2019, which is more requests than OIP received in the same Fiscal Year.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Vanessa R. Brinkmann

Executed on this 12th day of November 2019.